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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,222	10/18/2001	Ralf Oberbeck	THIELK-012XX	7404

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EXAMINER

BURNHAM, SARAH C

ART UNIT PAPER NUMBER

3636

DATE MAILED: 12/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/982,222

Applicant(s)

OBERBECK ET AL.

Examiner

Sarah C. Burnham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☒ Claim(s) 1-7 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Claim 8 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as
ok being drawn to a nonelected species, there being no allowable generic or linking claim.

Election was made **without** traverse in Paper No. 6.

Priority

2. Acknowledgement is made of applicant's claim for foreign priority based on application number 10061364.0 filed in Germany on 11/09/2000.

Information Disclosure Statement

3. The information disclosure statement filed February 20, 2002 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

Specification

4. The disclosure is objected to because of the following informalities:

- ok – The specification refers to “swiveling lever 6” in page 4, paragraph [0015], lines 1-2. Later in page 4, paragraph [0016], line 5, “swiveling lever 4a” is

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referenced. It appears as if the first reference to "swiveling lever 6" should be replaced with "swing lever 6."

Appropriate correction is requested

Claim Objections

5. Claims 1-7 are objected to because of the following informalities:

- Claim discloses a "switching element" in line 2. However in line 6 of claim 1, lines 1-2 of claim 2 and line 4 of claim 3 the element is referred to as a "stepped switching mechanism." Consistent naming conventions (i.e. use switching element OR stepped switching element) would add clarity to the claims.

- Claims 4-7 are objected to as being dependent upon an objected base claim.

Appropriate correction is requested

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "the direction of travel" (claim 7, line 3) lack sufficient antecedent basis. Furthermore, the use of this phrase is vague and indefinite. A car can travel in

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multiple directions (i.e. forward and reverse) and a single spring cannot pre-tension a seat back in multiple directions.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Robinson (5,813,725). Robinson discloses a device to actuate (26) a drive gear (30) of an adjustment mechanism (10) of a seat (12). A switching mechanism (84)(78)(102)(106)(108) is manually operable by means of a swiveling lever (100). When swiveling lever (100) is pulled upwards in the clockwise direction elements (84)(78)(102) move in a clockwise direction while elements (106)(108) move in a counter clockwise direction. This demonstrates how switching mechanism (84)(78)(102)(106)(108) is manually operable by swiveling lever (100) in two directions. A release mechanism (36) provides a releasable rotational connection between switching mechanism (84)(78)(102)(106)(108) and drive gear (30). Switching mechanism (84)(78)(102)(106)(108) is rotationally connected with drive gear (30) via an intermediate gear (34). Movement of intermediate gear (34) to a "second position, as shown in Figure 4, results in the release of its teeth from positioning gear [or in the instant case "drive gear"]" (column 3, lines 43-46). Release mechanism (36), in the

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form of a linkage device, is attached to swiveling lever (100) by way of element (84), which is part of switching mechanism (84)(78)(102)(106)(108). Intermediate gear (34) is attached to release mechanism (36), which is in turn attached to switching mechanism (84)(78)(102)(106)(108), which finally is attached to swiveling lever (100). All of these elements pivot together about a fixed axis (A).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 6 and 7 are rejected as best understood with the above cited indefiniteness under 35 U.S.C. 103(a) as being unpatentable over Robinson (5,813,725) in view of Olivieri (5,590,932). As disclosed above, Robinson discloses all claimed elements with the exception of a swing lever that is pre-tensioned by a spring and a seat back that is pre-tensioned along the direction of travel by a spring.

Olivieri teaches the use of a spring (30) in conjunction with pivot pin (24) to ensure that "seat back (not shown) is biased in a forward direction" (column 2, line 64).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to add a spring (30) as taught by Olivieri to the hinge pin (22) disclosed by Robinson. Such an addition would ensure that the seat back (14) does not instantly

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dump backwards upon the release of the actuating device (26), but instead requires pressure from the back of the seat occupant to recline the backrest (14).

Secondly, Olivieri teaches the use of an intermediate gear (66) mounted on a swing lever (18) that is pre-tensioned into engagement with a drive gear (16) by a spring (76). Intermediate gear (66) and swing lever (18) are releaseably coupled to a swiveling lever (22) by means of a release mechanism in the form of cam surface (68).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to mount the intermediate gear (34) disclosed by Robinson on a pre-tensioned swing lever (18) taught by Olivieri. By mounting intermediate gear (34) on a swing lever (18), gravity acting on the swing lever would assist pin (36) in the disengagement of intermediate gear (34) from drive gear (30). The swiveling lever (100) would therefore be more easily rotated because it is not solely the pin overcoming the forces which engage intermediate gear (34) with drive gear (30), but a combination of the pin (36) and gravity acting on the swing lever.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to seat adjustment devices with rotating gears in general:

- Kato (4,736,986)
- Notta et al. (5,322,346)

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- Su (6,145,930)
- Ikegaya (0 367 096 A2)
- Pickles (4,294,488)
- Holloway (6,371,557)

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah C. Burnham whose telephone number is 703-305-7315. The examiner can normally be reached on M-Th 7:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 703-308-0827. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1020.

SCB
December 19, 2002


Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600